

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-466-74-2611
Issued to: JAMES FARRELL BARNES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2015

JAMES FARRELL BARNES

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1, now 5.30-1.

By order dated 14 August 1974, an Administrative Law Judge of the United States Coast Guard at Memphis, Tennessee revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that while holding the above captioned merchant mariner's document, on or about 28 September 1970, Appellant was convicted by the Court of Calcasieu Parish, Lake Charles, Louisiana, for violation of the narcotic drug laws of the state of Louisiana.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a Certificate of Service of the charge and specification, and a certified copy of the conviction by Calcasieu Parish Court.

In defense, Appellant offered in evidence the testimony of Paul N. Fanolis and his own testimony.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision and order was served on 24 September 1974. Appeal was timely filed on 16 August 1974.

FINDINGS OF FACT

On 28 September 1970, while holding his merchant mariner's document, Appellant was convicted on a plea of "Guilty" to possession of marijuana by a court of record and of competent

jurisdiction, to wit: Court of Calcasieu Parish, Louisiana, sitting at Lake Charles, Louisiana, and was thereafter sentenced to one year imprisonment, all of which was remitted to unsupervised probation.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Essentially, Appellant has presented four issues which are as follows:

- (1) No proof was presented to show that Appellant had been convicted for possession of marijuana as that substance is defined by Federal law.
- (2) No evidence was presented to show that Appellant's alleged conviction was in a court of record.
- (3) The evidence introduced to show that Appellant was convicted on the date of September 28, 1970 was incorrect.
- (4) The evidence of Appellant's good character and his non-use of narcotic drugs should have been considered by the Administrative Law Judge in formulating his opinion and order.

APPEARANCE: Jim S. Umstead, Jr., Esq., Memphis, Tennessee.

OPINION

I

Appellant's documents were revoked under the authority of 46 USC §239b (a), which states that action may be taken to revoke the seaman's documents of " (1) any person who... has been convicted in a court of record of a violation of the narcotic drug laws of the United States... or any State...." Section 239a states that for purposes of Section 239b, "narcotic drug shall... include marihuana as defined by Section 102 (15) of such Act [21 U.S.C. 802 (15)]." Thus, for the purposes of Section 239b the term "narcotic drug law" is limited by the federal definition of "narcotic drug" as found in 21 USC 802(15). This necessarily means, that where Section 239b authorizes revocation of documents for a conviction under the "Narcotic drug law" of any State, that section incorporates the State Narcotic drug law only to the extent that the State's definition of Narcotic drug falls within the federal definition of Narcotic drug. Commandant's Appeal Decision No. 1984.

46 CFR 137.03-10(a) states, in part, that action may be taken to revoke a seaman's documents, "After proof of a narcotics conviction by a court of record as required by Title 46, U.S. Code, section 239b...." It follows from the prior discussion that, in order to establish a violation under 46 CFR 137.03-10(a), it is necessary not only to prove the existence of the State court conviction, but also to prove that the substance upon which the State charge is based falls within the federal definition of "Narcotic drug."

This same reasoning also applies to 46 CFR 137.20-110(c), which states that a "judgment of conviction for a narcotic drug law violation...by a State court of record is conclusive in proceedings under Title 46 U.S. Code, section 239b." This necessarily means that the record of conviction is conclusive only after it is shown that the State offense falls within the federally defined "Narcotic drug law."

In the instant case, Appellant was found to have been in possession of marihuana, which gave rise to his conviction, upon a plea of guilty, before the Court of Calcasieu Parish, Louisiana, in September 1970. Under Louisiana Penal Statutes which existed at this time, it was, "unlawful for any person to... possess...any narcotic drug...." LSA-R.S. 40:962(A). "Narcotic drug" was defined as including "...cannabis, marihuana...." L.S.A.-R.S. 40:961(19).

Appellant bases his first point of appeal on the assertion that the definition of "marihuana" under Louisiana law is more expansive than the federal definition of this substance, and therefore it has not been established whether this State law conviction may be used to proceed under 46 U.S.C. 239b. In support of this proposition he offers the current Louisiana statutory definition of "marihuana," which is "...all parts of the plants of the Genus Cannabis, whether growing or not...." L.S.A.-R.S. 40:961(18). The federal definition of marihuana for the purposes of Section 239b is found in 21 U.S.C. 802(15), which states:

"(15) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not,...."

Appellant argues that, since the federal definition of marihuana is "Cannabis sativa L.," the Coast Guard has the burden of proving that the substance for which he was convicted under State law is of the same species.

The Statutory definition of marihuana pointed out by Appellant was not enacted by the Louisiana Legislature until 1972, at least two years after his conviction in that State. The former

legislative definition which it replaced, and which was in effect in September of 1970, defined cannabis as "...Cannabis sativa L....", L.S.A.-R.S. 40:961(3), the same definition as found at 21 U.S.C. 802(15). Since the definitions are the same the conviction is conclusive.

II

Appellant's second point of appeal is without merit, as the record of conviction in a State court, which was introduced into evidence at the Hearing, was shown to have been issued by a "court of record" as required by 46 CFR 137.20-110(c). "Court of record" is defined at 46 CFR 137.03-15 as being one:

- "(1) which conforms with the common law principles that it has a clerk , a seal, keeps a record of its proceedings, and has the power to fine and imprison; and
- (2) Where its proceedings are, by law or usage in the State... recognized as conclusive evidence in other courts of that jurisdiction.

The document of conviction which was introduced into evidence showed on its face that it was rendered by a court which had a clerk, a seal, and punitive powers. No independent evidence was necessary to show that judgments which are rendered by the Calcasieu Parish Court are afforded permanent status by other courts in Louisiana. An Administrative Law Judge may, and in this case properly did, take judicial notice of this matter. Thus, the elements of 46 CFR 137.03-15 were satisfied.

III

In his third point of appeal, Appellant argues that the date shown on the certified copy of the State Court conviction which was introduced as evidence is at variance with his actual date of conviction by that court, and that this constituted a reversible error in these proceedings. There is a two day discrepancy in the aforementioned dates, due to inadvertence by the Clerk of the Parish Court. However, the date of the conviction is not an issue of the essence; rather the fact of the State court conviction for a drug violation is crucial for purpose of 46 U.S.C. 239b. Since Appellant made an oral admission of this fact while giving testimony at the hearing, I find that this alleged error was a harmless one.

IV

Finally, Appellant argues that the Administrative Law Judge erred in not taking certain mitigating factors into consideration

before assessing the penalty of revocation. This argument is not well received as there has been no showing that the Judge failed to take the character evidence presented by Appellant into account in rendering his decision. 46 USC 239b empowers the Secretary of Transportation to revoke a seaman's documents if it is shown, before an Administrative Law Judge, that he has been convicted of a narcotics violation. Authority over these types of cases has been delegated to the Commandant of the Coast Guard. In this role, the Coast Guard has determined that permitting a person who has had association with drugs to sail on merchant vessels would clearly be a threat to the safety of life and property. The conviction which has been proven shows that Appellant has a past history of such association. The character evidence which was presented does not outweigh the considerations implicit in the conviction.

ORDER

The order of the Administrative Law Judge, dated at Memphis, Tennessee on 14 August 1974 is affirmed.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 10th day of Feb 1975.

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